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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

2002 JUL -9 PM 3:52

J V SKUPNIEWITZ
CLERK US DIST COURT
WD OF WI

NEIL GAIMAN and MARVELS AND
MIRACLES , LLC,

Plaintiffs,

v.

TODD McFARLANE, et al.

Defendants-Counterclaimants.

Case No. 02-C-0048-S

**AFFIDAVIT OF TODD G. SMITH IN SUPPORT OF THE McFARLANE
DEFENDANTS' RULE 37 MOTION FOR ORDER COMPELLING RESPONSES TO
DOCUMENT REQUESTS INVOLVING MIRACLEMAN INTELLECTUAL
PROPERTY**

STATE OF)
) SS
COUNTY OF DANE)

After being first duly sworn, Todd G. Smith deposes and states as follows:

1. I am one of the attorneys for defendants Todd McFarlane, Todd McFarlane Productions, Inc., TMP International, Inc. and McFarlane Worldwide, Inc. and make this Affidavit upon personal knowledge.

2. Attached as Exhibit A is a true and correct copy of an article I obtained describing Marvel Comics' October 2001 conference call relating to the establishment of plaintiff Marvel and Miracles, LLC for the purpose of funding this litigation. I obtained the article at the website listed on the exhibit.

3. Attached as Exhibit B is a true and correct copy of Mr. Simmons' July 3, 2002 letter refusing to produce the material requested in the McFarlane Defendants' previous document requests. We have redacted the letter to exclude irrelevant communications.

4. Attached as Exhibit C is a true and correct copy of the First Set of Requests for Documents to Plaintiffs by Defendants Todd McFarlane, Todd McFarlane Productions, Inc. TMP International, Inc. and McFarlane Worldwide, Inc.

Dated this 9th day of July, 2002.



Todd G. Smith

Signed and sworn to before me this
9th day of July, 2002.



Notary Public, State of Wisconsin
My Commission expires: 03/05/06

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